Aaishah Healther Bong bt Colin v Pendaftar Muallaf Wilayah Persekutuan Kuala Lumpur & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDUCIAL REVIEW NO WA-25–111–04 OF 2023
AHMAD KAMAL J
18 DECEMBER 2023

Civil Procedure — Judicial review ('JR') — Whether subject matter amenable to JR — Plaintiff Muslim-convert applied to High Court for leave to file JR application for various declarations and mandamus order directing Registrar of Muallafs ('R1') to delete her name from Muallafs Register — Plaintiff made no application to Syariah Court to renounce Islam — Whether leave could not be granted as subject matter of plaintiff's application was not amenable to JR and plaintiff's case was frivolous and non-arguable — Whether only Syariah Court had sole jurisdiction/power to declare/order that plaintiff was no longer a Muslim — Federal Constitution, art 121(1A) — Whether R1 could not decide that issue or delete plaintiff's name from Muallafs Register simply on her application to do so

The applicant, who was born and raised as a Christian since birth, became a Muslim when she was 20 years old. Two years thereafter, she affirmed a statutory declaration stating that she wanted to renounce Islam and revert to being a Christian. Without first making any application to the Syariah Court to declare that she was no longer a Muslim, the applicant instead sent a letter to the first respondent ('R1') requesting that her name be deleted from the Register of Muallafs (Muslim converts). When she failed to receive any reply from R1 despite several reminders, the applicant filed the instant application for leave to apply for judicial review to challenge R1's 'omission' to decide on her application. The reliefs the applicant sought in the substantive judicial review application were for a host of declarations including one that R1 had implied jurisdiction under the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505') to declare that a person was no longer a Muslim. She also sought a declaration that under art 11(1) of the Federal Constitution, she had a right to profess and practise the religion of her choice and that R1's omission to make a decision on her application was irrational and unreasonable. The applicant sought an order of mandamus compelling R1 to make an immediate decision on her application to cancel her name from the Register of Muallafs. The respondents objected, saying that the subject matter of the application was not amenable to judicial review as the issue of whether the applicant was no longer a Muslim could only be decided by the Syariah Court pursuant to art 121(1A) of the Federal Constitution and that no order for mandamus could issue as R1 had no power or legal duty to decide the applicant's application to renounce Islam.

Held, dismissing the leave application:

(1) The test to decide whether to grant leave to file a judicial review application was: (a) whether the subject matter was amenable to judicial review; and if so (b) whether from the materials available, the application was frivolous, and if not thought to be frivolous, whether the applicant had an arguable case to obtain the relief sought at the substantive hearing (see para 7).

(2) Even though the prayers in the applicant's application were framed to fit the prayers for constitutional and statutory judicial review, the ultimate subject matter of the application was the applicant's application to renounce Islam. The applicant did not file any application in the Syariah Court to renounce Islam but merely wrote to R1 to cancel her name from the Register of Muallafs. Only the Syariah Court alone, pursuant to art 121(1A) of the Federal Constitution, had the jurisdiction to determine whether the applicant was no longer a Muslim. Hence, the subject matter of the proposed instant judicial review application was not amenable to judicial review (see paras 15 & 17–18).

(3) The applicant's argument that the Syariah Court had no jurisdiction over her because she no longer professed the Islamic faith had no merit. This was because following her conversion to Islam and her registration in the Register of Muallafs, Act 505 considered her a Muslim for the purposes of any Federal or State law and for all time and the applicant could not unilaterally renounce the religion of Islam (see paras 50–54).

(4) Any application for an order of mandamus made by way of judicial review proceedings must comply with the requirements of s 44 of the Specific Relief Act 1950. Based on that section and case law, the applicant had to show not only that she had a legal right to have the act performed but that the right must be so clear, specific and well defined as to be free from any reasonable controversy. Mandamus could not issue when the right was doubtful or was a qualified one or where it depended upon an issue of fact to be determined. The existence of a legal right to compel the performance of a legal duty cast upon R1 must be shown. R1 had no jurisdiction to determine the applicant's application to renounce Islam. As R1 had no legal duty to decide on that application, there was no 'omission' his part that could attract an order of mandamus against him (see paras 60, 63 & 67).

(5) The applicant had failed the test for grant of leave as not only was the subject matter of the application not amenable to judicial review, but the applicant had no arguable case and the orders she sought were frivolous in nature (see paras 71–73).

[Bahasa Malaysia summary

Pemohon, yang dilahirkan dan dibesarkan sebagai seorang Kristian sejak lahir, menjadi seorang Muslim ketika berusia 20 tahun. Dua tahun selepas itu, dia mengesahkan akuan berkanun yang menyatakan bahawa dia mahu meninggalkan Islam dan kembali menjadi seorang Kristian. Tanpa terlebih dahulu membuat sebarang permohonan kepada Mahkamah Syariah untuk mengisytiharkan bahawa dia bukan lagi seorang Islam, pemohon sebaliknya menghantar surat kepada responden pertama ('R1') meminta namanya dipadamkan daripada Daftar Muallaf. Apabila dia gagal menerima sebarang jawapan daripada R1 walaupun beberapa peringatan, pemohon memfailkan permohonan semasa untuk kebenaran memohon semakan kehakiman bagi mencabar 'peninggalan/kegagalan' R1 untuk memutuskan permohonannya. Relif yang dipohon pemohon dalam permohonan semakan kehakiman substantif adalah untuk pelbagai perisytiharan termasuk satu perisytiharan bahawa R1 mempunyai bidang kuasa trsirat di bawah Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 ('Akta 505') untuk mengisytiharkan bahawa seseorang itu tidak lagi seorang muslim. Dia juga memohon pengisytiharan bahawa di bawah perkara 11(1) Perlembagaan Persekutuan, dia mempunyai hak untuk menganut dan mengamalkan agama pilihannya dan bahawa peninggalan R1 untuk membuat keputusan mengenai permohonannya adalah tidak rasional dan tidak munasabah. Pemohon memohon perintah mandamus yang memaksa R1 membuat keputusan segera mengenai permohonannya untuk membatalkan namanya daripada Daftar Muallaf. Responden membantah, mengatakan bahawa perkara permohonan itu tidak boleh diterima oleh semakan kehakiman kerana isu sama ada pemohon bukan lagi beragama Islam hanya boleh diputuskan oleh Mahkamah Syariah menurut perkara 121(1A) Perlembagaan Persekutuan dan tiada perintah untuk mandamus boleh dikeluarkan kerana R1 tidak mempunyai kuasa atau kewajipan undang-undang untuk memutuskan permohonan pemohon untuk meninggalkan Islam.

Diputuskan, menolak permohonan kebenaran:

(1) Ujian untuk memutuskan sama ada memberi kebenaran untuk memfailkan permohonan semakan kehakiman ialah: (a) sama ada perkara itu boleh diterima oleh semakan kehakiman; dan jika ya (b) sama ada daripada material yang ada, permohonan itu adalah sia-sia, dan jika tidak dianggap remeh, sama ada pemohon mempunyai kes yang boleh dipertikaikan untuk mendapatkan relif yang diminta pada pendengaran substantif (lihat perenggan 7).

(2) Walaupun *prayer* dalam permohonan pemohon dirangka agar sesuai dengan prayer untuk semakan kehakiman perlembagaan dan berkanun, perkara utama permohonan itu ialah permohonan pemohon untuk meninggalkan Islam. Pemohon tidak memfailkan sebarang permohonan

di Mahkamah Syariah untuk meninggalkan Islam tetapi hanya menulis kepada R1 untuk membatalkan namanya daripada Daftar Muallaf. Hanya Mahkamah Syariah sahaja, menurut perkara 121(1A) Perlembagaan Persekutuan, mempunyai bidang kuasa untuk menentukan sama ada pemohon bukan lagi seorang Muslim. Oleh itu, perkara pokok permohonan semakan kehakiman semasa yang dicadangkan tidak boleh diterima oleh semakan kehakiman (lihat perenggan 15 & 17–18).

(3) Hujah pemohon bahawa Mahkamah Syariah tidak mempunyai bidang kuasa ke atasnya kerana dia tidak lagi menganut agama Islam tidak mempunyai merit. Ini kerana selepas memeluk agama Islam dan pendaftarannya dalam Daftar Muallaf, Akta 505 menganggapnya sebagai seorang Muslim untuk tujuan mana-mana undang-undang Persekutuan atau Negeri dan untuk sepanjang masa dan pemohon tidak boleh meninggalkan agama Islam secara sepihak (lihat perenggan 50–54).

(4) Apa-apa permohonan untuk perintah mandamus yang dibuat melalui prosiding semakan kehakiman mesti mematuhi kehendak s 44 Akta Relif Spesifik 1950. Berdasarkan seksyen dan undang-undang kes itu, pemohon perlu menunjukkan bukan sahaja bahawa dia mempunyai hak undang-undang untuk melakukan perbuatan itu tetapi hak itu mestilah begitu jelas, khusus dan ditakrifkan dengan baik supaya bebas daripada sebarang kontroversi yang munasabah. Mandamus tidak boleh mengeluarkan apabila hak itu diragui atau dikecualikan atau jika ia bergantung kepada isu fakta yang akan ditentukan. Kewujudan hak undang-undang untuk memaksa pelaksanaan tugas undang-undang yang dikenakan ke atas R1 mesti ditunjukkan. R1 tidak mempunyai bidang kuasa untuk menentukan permohonan pemohon untuk meninggalkan Islam. Oleh kerana R1 tidak mempunyai kewajipan undang-undang untuk memutuskan permohonan itu, tidak ada 'peninggalan' bahagiannya yang boleh menarik perintah mandamus terhadapnya (lihat perenggan 60, 63 & 67).

(5) Pemohon telah gagal dalam ujian untuk mendapatkan kebenaran kerana bukan sahaja perkara permohonan itu tidak boleh diterima oleh semakan kehakiman, tetapi pemohon tidak mempunyai kes yang boleh dipertikaikan dan perintah yang dimintanya adalah remeh (lihat perenggan 71–73).]

Cases referred to

Azizah bte Shaik Ismail & Anor v Fatimah bte Shaik Ismail & Anor [2004] 2 MLJ 529; [2003] 1 MLRA 570; [2003] 4 CLJ 281; [2002] 4 AMR 4437, FC (refd)

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1; [1991] 1 MLRA 301; [1991] 1 CLJ Rep 77, SC (refd)

Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757; [2014] 3 MLRA 173; [2014] 4 CLJ 253, FC (refd)

Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2012] 3 MLJ 694; [2010] 3 MLRA 355; [2011] 2 CLJ 165, CA (refd)

Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan dan satu lagi [2005] 1 MLJ 197; [2004] 1 MLRA 528; [2004] 3 CLJ 409; [2004] 4 AMR 529, FC (refd)

Karpal Singh Ram Singh v Ketua Hakim Negara [2011] 1 MLRH 23; [2011] 4 CLJ 179, HC (refd)

Koon Hoi Chow v Pretam Singh [1972] 1 MLJ 180b; [1972] 1 MLRH 497 (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585; [2007] 3 AMR 693; [2007] 3 CLJ 557; [2007] 1 MLRA 359, FC (refd)

Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors [2003] 3 MLJ 705; [2003] 1 MLRA 283; [2003] 3 CLJ 289; [2003] 4 AMR 501, FC (folld)

Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd [2008] 4 MLJ 641; [2008] 5 CLJ 321; [2008] 1 MLRA 705, FC (refd)

Peguam Negara Malaysia v Dr Micheal Jeyakumar Devaraj [2012] 1 MLJ 179; [2012] 1 MLRA 157; [2011] 9 CLJ 645, CA (folld)

Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 2 MLRA 70; [2021] 3 CLJ 301, FC (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489; [1999] 1 MLRA 115; [1999] 2 CLJ 5, FC (refd)

Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors [2018] 2 MLJ 354; [2017] 6 MLRA 345; [2017] 2 SSLR 387, CA (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 MLRH 507; [2006] 1 CLJ 927, CA (refd)

WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 CLJ 478; [2012] 4 MLRA 257, FC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 ss 2(1)(d), (1)(e), 46(2)(b)(x), 85(1), 91, 91(1)
Courts of Judicature Act 1964 s 25(2), Schedule, para 1
Federal Constitution arts 11(1), 121(1A), Ninth Schedule, List II, item 1
Judges' Code of Ethics 2009 s 13
Rules of Court 2012 O 53, O 53 rr 1(2), 3
Specific Relief Act 1950 s 44, 44(1), Chapter VIII, Part 2

Iqbal Harith Liang (Fahri, Azzat & Co) for the applicant.

Mohammad Sallehuddin bin Md Ali (Federal Counsel, Attorney General's Chambers) for the respondent.

Ahmad Kamal J:

INTRODUCTION

[1] The applicant on 20 April 2023 filed an application that leave be granted to the applicant under O 53 r 3 of the Rules of Court 2012 ('the ROC') to apply for a judicial review (encl 1).

[2] The applicant seeks the following reliefs:

(a) a declaration that the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505') gives an implied jurisdiction to the first respondent to declare that a person is no longer a Muslim;

(b) a declaration that s 91 of Act 505 is unconstitutional because it is inconsistent with art 11(1) of the Federal Constitution ('the FC') and alternatively, a declaration that s 91 of Act 505 is inconsistent with item 1 of the State List of the FC;

(c) a declaration that s 85(1) of Act 505 is unconstitutional because it is inconsistent with item 1 of the State List of the FC and consequently, a declaration that the definition of Muslim in s 2(d) of Act 505 is unconstitutional;

(d) a declaration that the definition of Muslim in s 2(e) of Act 505 is unconstitutional because it is inconsistent with item 1 of the State List of the FC;

(e) a declaration that pursuant to art 11(1) of the FC, the applicant has a right to profess and practice the religion of her choice;

(f) an order of mandamus that the first respondent must consider the applicant's application for her name to be cancelled from the Register of Muallafs, and make a decision immediately; and

(g) a declaration that the refusal and/or delay of the first respondent to decide the applicant's application in the letters dated 30 January 2023, 20 February 2023 and 17 March 2023 is irrational and unreasonable.

[3] In the application, the applicant essentially seeks leave for judicial review to challenge the alleged omission on the part of the first respondent to decide on her application to renounce Islam.

[4] After the hearing, I dismissed the applicant's application in encl 1 and will now set out the grounds for my judgment.

BACKGROUND FACTS

[5] The background facts of this case are largely undisputed and can be summarised as follows:

(a) the applicant was born on 9 July 1997 to Christian parents and was baptised by her parents on 28 January 1998;

(b) the applicant was raised as a Christian by her parents and was confirmed as a Christian on 6 September 2013 when she was 16 years old;

(c) on 18 August 2017, the applicant converted to Islam and was registered as a *Muallaf* by the first respondent;

(d) on 27 January 2022, the applicant affirmed a statutory declaration where she stated that she wanted to renounce Islam and revert to Christian;

(e) on 30 January 2023, the applicant through her solicitor issued a letter to the first respondent to apply for her name to be cancelled from the Register of Muallafs;

(f) on 20 February 2023, the applicant through her solicitor issued a letter to the first respondent to obtain the latest status of her application;

(g) on 17 March 2023, the applicant through her solicitor issued a letter to the first respondent to demand that the first respondent decide her application within seven days from the date of the letter; and

(h) as of the date of filing of the application, the first respondent has not given any decision on her application.

THE LAW

[6] The Federal Court in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296 at p 303; [2012] 4 CLJ 478; [2012] 4 MLRA 257, speaking through Suriyadi Halim Omar FCJ (as he then was) held:

> ... Leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though ie unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.

[7] The test laid down for leave to commence a judicial review in *WRP Asia Pacific Sdn Bhd* are as follows:

(a) whether the subject matter is amenable to judicial review; and if so

(b) from the materials available, whether the application is frivolous and if not thought as frivolous, consider that the applicant has an arguable case to obtain the relief sought at the substantive hearing.

[8] The principles governing applications for leave to commence judicial review proceedings have also been set out in *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60 at p 69; [2006] 1 MLRH 507; [2006] 1 CLJ 927 where Gopal Sri Ram JCA (as he then was) held:

> [10] the High Court should not go into the merits of the case at the leave stage. Its role is only to see if the application for leave is frivolous ... So too will the court be entitled to refuse leave if it is a case where the subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable.

[9] It is trite that the applicant will have to satisfy the tests propounded in the above mentioned cases in order to secure the leave to commence the judicial review proceedings. At this stage, the court need not go into the merits of the case, but only to see if the subject matter is amenable to judicial review or whether the application for leave is frivolous.

PRELIMINARY OBJECTIONS ('PO')

[10] During the hearing of the application, the learned federal counsel from the Attorney General's Chambers ('AGC') was present and raised a PO. The PO was premised on the following grounds:

(a) the ultimate subject matter of the application is not amenable to judicial review by virtue of art 121(1A) of the FC; and

(b) the applicant's prayer for mandamus as framed by the applicant is frivolous and vexatious as the first respondent has no legal duty to decide the applicant's application to convert out of Islam.

THE DECISION OF THE COURT

The subject matter is not amenable to judicial review

[11] The applicant essentially contends that based on the prayers framed in the application, the subject matter of the application is that of constitutional judicial review and statutory judicial review which falls within the jurisdiction of this honourable court. Therefore, this application is not barred by art 121(1A) of the FC.

[12] This court is of the view in determining the application of art 121(1A) of the FC, the approach that should be taken is the 'subject matter approach'

and not the 'remedy prayed for' approach.

[13] I find support for my view by referring to the Federal Court case of *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors* [2003] 3 MLJ 705; [2003] 1 MLRA 283; [2003] 3 CLJ 289; [2003] 4 AMR 501, where it was held as follows:

> [16] In *Abdul Shaik bin Md Ibrahim*, Abdul Hamid Mohamed J held that *the case is not removed from the jurisdiction of the Syariah Court merely because the plaintiffs have prayed for the remedy of declarations. His Lordship did not follow Isa Abdul Rahman but followed Soon Singh which adopted the 'subject matter' approach rather than the 'remedy prayed for' approach* ...
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> [21] We respectfully agree with Abdul Hamid Mohamad J that *Isa Abdul Rahman cannot be supporte*d.
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> [27] With respect, the *Court of Appeal, in our view, fell into the same error as the learned judge in taking 'the remedy prayed for' approach instead of the 'subject matter approach'* ... (Emphasis added.)

[14] Further, in *Azizah bte Shaik Ismail & Anor v Fatimah bte Shaik Ismail & Anor* [2004] 2 MLJ 529; [2003] 1 MLRA 570; [2003] 4 CLJ 281; [2002] 4 AMR 4437, the Federal Court held:

> [5] This appeal has again raised the question of jurisdiction of the Syariah Court and the High Court. *If the Syariah Court has jurisdiction over the matter, the High Court does not have jurisdiction over it — art 121(1A) of the Federal Constitution. That calls for the determination of the approach that the court should take in determining the jurisdiction of the Syariah Court.*
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> [6] This court has very recently decided on this point in *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors* [2003] 3 MLJ 705; [2003] 1 MLRA 283; [2003] 3 CLJ 289; [2003] 4 AMR 501. In that case, the subject matter was the adjudication and administration of the will of a deceased Muslim, even though the respondents (plaintiffs in the High Court) had prayed for remedies of a declaration that the land in question be surrendered to the estate of Shaik Eusoff bin Shaik Latiff, deceased, a declaration that the land in question be vested upon the respondents as executors of the deceased's estate and for an account and, in the alternative, the respondents prayed for damages and an injunction.
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> [7] Haidar CJ (Malaya) (delivering the judgment of the court) surveyed the earlier judgments of this court, the Supreme Court as well of the High Court and concluded:
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> > We respectfully agree with Abdul Hamid Mohamad J that *Isa Abdul Rahman* cannot be supported.
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> [8] It should be noted that *Isa Abdul Rahman* is the case of *Majlis Agama Islam Pulau*

Pinang lwn Isa Abdul Rahman dan satu yang lain [1992] 2 MLJ 244; [1992] 1 MLRA 240; [1992] 1 CLJ Rep 2010. In that case, even though the land and mosque in issue were a 'wakaf am', the Supreme Court held that since the real order asked for by the respondents was a perpetual injunction to restrain the appellant or its agents from demolishing the said mosque and to restrain the appellant from taking any preliminary steps to demolish the mosque and erect a commercial building on the site and since the Syariah Courts did not have jurisdiction to issue an injunction, therefore the High Court had jurisdiction over the suit. This approach is what has become known as 'the remedy approach'. Secondly, the decision of Abdul Hamid Mohamad J (as he then was) referred to in the judgment of Haidar CJ (Malaya) refers to the case of *Abdul Shaik bin Md Ibrahim & Anor v Hussien bin Ibrahim & Ors* [1999] 5 MLJ 618 (HC) which adopted the 'subject matter' approach.

[9] Therefore, *this court has put to rest that the subject matter approach should be adopted*.

[10] In this case, *there is not doubt that the subject matter of the case is the custody of the child. That clearly falls within the jurisdiction of the Syariah Court*. Even learned counsel for the appellants did not dispute that. *His argument was that since the Syariah Court had no jurisdiction to issue the writ of habeas corpus, the civil court had the jurisdiction to issue the same in this case. The short answer to that argument is that habeas corpus is the remedy sought and not the subject matter of the case*.

[11] *Since the subject matter in question is the custody of the child and since that is clearly within the jurisdiction of the Syariah Court, by virtue of the provisions of art 121(1A) of the Federal Constitution, the High Court has no jurisdiction over the matter*. (Emphasis added.)

[15] Coming back to the facts in the present case, I am of the view that even though the prayers in the application are framed to fit the prayers for constitutional and statutory judicial review, the ultimate subject matter of the application is the applicant's application to convert out of Islam ie renunciation of Islam.

[16] In the present case, the subject matter of the application is the applicant's application to renounce Islam. This is evident based on the following:

(a) the applicant converted to Islam on 18 August 2017 and was registered as a *Muallaf* by the first respondent; and

(b) the applicant affirmed the statutory declaration on 27 January 2022 to renounce Islam and revert to Christianity.

[17] However, the applicant did not file any application in the Syariah Court to renounce Islam. Instead, the applicant wrote to the first respondent to cancel her name from the Register of Muallafs.

[18] Therefore, applying the 'subject matter approach' as mentioned in the above authorities, I am of the considered view that the applicant's application to renounce Islam falls within the jurisdiction of the Syariah Court. The Syariah Court has the jurisdiction to hear and determine the applicant's application to renounce Islam. Therefore, the ultimate subject matter of the application is not amenable to judicial review by virtue of art 121(1A) of the FC.

[19] Article 121(1A) of the FC clearly provides that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. It states as follows:

> 121 Judicial power of the Federation
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> (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely —
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> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
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> (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
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> (c) (Repealed),
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> and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.
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> (1A) *The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts*. (Emphasis added.)

[20] There have been many cases concerning art 121(1A) of the FC decided by the courts in the last decades. The law remains that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[21] The following cases would show that matters concerning Islamic matters, which include renunciation of Islam would fall under the jurisdiction of the Syariah Court by virtue of art 121(1A) of the FC.

[22] In *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 1 MLRA 301; [1991] 1 CLJ Rep 77, the appellant sought a declaration that her deceased son at the time of his death was not a Muslim and/or had renounced the Islamic faith and for the consequential declaration that she was entitled to the body of the deceased.

Mohamed Yusof SCJ (as he then was) in his judgment mentioned as follows:

> *The foremost question to be determined is whether the deceased had renounced Islam during his lifetime and the only forum qualified to answer the question is the Syariah Court*. It would not be feasible to direct the judicial commissioner to refer the matter to the chairman of the fatwa committee under s 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned judicial commissioner, for a ruling by the committee under s 37(4). *This is a matter which is within the jurisdiction of the Syariah Court and not the High Court*. Further, s 37(4) has been overtaken and superseded by the constitutional amendment in art 121(1A) of the Federal Constitution. (Emphasis added.)

[23] Further, in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 1 MLRA 115; [1999] 2 CLJ 5, the appellant in this case was brought up as a Sikh but had converted to Islam without the knowledge and consent of his mother when he was still a minor. He then upon reaching 21 years of age, went through a baptism ceremony into the Sikh faith, thereby renouncing Islam. Subsequently, he filed an originating summons seeking a declaration that he was no longer a Muslim.

[24] The Federal Court also held that in cases of conversion out of Islam, the jurisdiction lies in the Syariah Court. Mohd Dzaiddin FCJ (as he then was) held that:

> *The jurisdiction of the Syariah Courts to deal with conversions out of Islam, although not expressly provided for in some State Enactments, can be read into those enactments by implication derived from the provisions concerning conversion into Islam. It is inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication, conversion out of Islam should also fall under the jurisdiction of the same courts, Thus, the appellante application for a declaration that he was no longer a Muslim came within the jurisdiction of the Syariah Court and not that of the High Court* (see pp 502A, G and 503B); *Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang* [1996] MLJU 500; [1996] 3 CLJ 231 not followed.
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> ...
>
> It cannot be disputed that the Syariah Court derives its jurisdiction under a State law enacted pursuant to art 74(2) of the Constitution following para 1, State List of the Ninth Schedule of the Constitution and in the case of the Federal Territories by virtue of item 6(e) Federal List. Thus, on a matter relating to conversion to Islam, all State Enactments and the Act expressly vest the Syariah Court jurisdiction to deal with the matter. See, forexample, ss 139, 140, 141 of the Kedah Enactment; Part IX (ss 85–95) of the Administration of Islamic Law (Federal Territories) Act 1993; and Part VIII (ss 77–89) the Penang Administration of Muslim Law Enactment 1993. The sections referred to deal with capacity, requirements of a valid conversion, registration, certificate of conversion and recognition of a convert as a Muslim. It is

interesting to note that s 87 of the Federal Territories Act provides that from the moment of his conversion, a convert becomes subject to the same duties and obligation as any other Muslim.

...

One reason we can think of is that the determination of a Muslim convert's conversion out of Islam involves inquiring into the validity of his purported renunciation of Islam under Islamic law in accordance with Hukum Syarak (*Dalip Kaur*). *As in the case of conversion to Islam, certain requirements must be complied with under Hukum Syarak for a conversion out of Islam to be valid, which only the Syariah Courts are the experts and appropriate to adjudicate. In short, it does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts*. (Emphasis added.)

[25] In *Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan dan satu lagi* [2005] 1 MLJ 197; [2004] 1 MLRA 528; [2004] 3 CLJ 409; [2004] 4 AMR 529, the appellants made a statutory declaration declaring that they were no longer embraced the religion of Islam in August 1998. They were sentenced to imprisonment on 5 October 2000 for failure to abide by the order of the Syariah Court of Appeal relating to the offence under Undang-Undang Majlis Agama Islam and Adat Istiadat Melayu Kelantan which they had committed before August 1998.

[26] The issue before the court was whether the appellants must be Muslims when they were sentenced in October 2000. Ahmad Fairuz CJ (as he then was) held that:

The appellants were not automatically excused from the charge in the Syariah Court just because they had made the statutory declaration declaring they were no longer embracing the religion of Islam.

The court at para 6 stated as follows:

Di Mahkamah Tinggi Kota Bharu, *permohonan perayu-perayu untuk pengisytiharan telah ditolak. Mahkamah Tinggi berpendapat bahawa, antara lainnya, perayu-perayu belum disahkan murtad mengikut prosedur yang ditetapkan oleh Enakmen Majlis Agama Islam dan Adat Istiadat Melayu Kelantan 1994 ('Enakmen 1994') dan kerana itu perayu-perayu masih beragama Islam*. Justeru itu, perayu-perayu adalah mengikut perkara 121(1A) Perlembagaan Persekutuan yang berbunyi:

> The courts referred to in cl (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

tertakluk kepada bidang kuasa Mahkamah Syariah dan kerana itu Mahkamah Tinggi tidak mempunyai bidang kuasa untuk memutuskan permohonan tersebut. (Emphasis added.)

[27] More importantly, in *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585; [2007] 3 AMR 693; [2007] 3 CLJ 557; [2007] 1 MLRA 359, the Federal Court have also held that the civil court has no jurisdiction in matters pertaining to Syariah matters. The appellant in this case was born and brought up as a Muslim. She applied to the National Registration Department ('NRD') for a change in her name to Lina Joy and to have the word 'Islam' be removed from her Identity Card ('IC'). Her application was rejected on the ground that it was incomplete without the order of the Syariah Court.

[28] The issue before this court was whether the NRD was entitled in law to impose as a requirement for deleting the entry of Islam in the appellant's IC that she must produce a certificate or a declaration or an order from the Syariah Court that she had apostatized. The Federal Court by majority held that:

> (6) *There was no final decision that the appellant had no longer professed Islam*. Thus, the statement that the appellant could no longer be under the jurisdiction of the Syariah Court because the Syariah Court had only jurisdiction on persons professing Islam should not be emphasised accordingly. *The way a person renounced from a religion should be in accordance of the regulation or law or practice determined or stipulated by the religion itself*. The appellant was not prevented from marrying. The freedom of religion under art 11 of the Federal Constitution required that the appellant complied with the rituals or law of the Islamic religion specifically regarding renunciation of the religion. *Once the decision of the religion of Islam had been complied and the religious Islamic authority admit her apostasy then only could the appellant profess Christianity* (see para 14).
>
> (7) *The case of Soon Singh clearly showed that the apostasy matter was within the jurisdiction of the Syariah Court*. item 1, Second List, Ninth Schedule of the Federal Constitution showed that the Islamic law was on of the matters that was in item 1 and when read together with the case of Dalip Kaur thus *it was obvious that the apostasy matter was a matter relating to Islamic law and it was clear that it was within the jurisdiction of the Syariah Court and due to art 11 of the Federal Constitution the civil courts could not interfere in this matter* (see para 16).
>
> (8) It was clear that in art 11 there was usage of the words '... right to profess and practice his religion...' The words 'has the right' was applicable to 'profess' and also 'practise': *Kamariah bte Ali lwn Kerajaan Negeri Kelantan, Malaysia* [2002] 3 MLJ 657; *Che Omar bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55 followed. Islam is not only a collection of dogma and rituals but it is also a complete way of life comprising of all kinds of human, individual or public, legal, political, economic, social, cultural or judicial activities. And when reading arts 11(1), 74(2) and item 1 in second list of the Ninth Schedule of the Federal Constitution it was obvious that Islam among others included of Islamic law. *Hence, if a Muslim intends to renounce from Islam, he is actually exercising his rights in the syariah law context which has it own jurisprudence relating to apostasy*. The conduct of the NRD officer was only to determine that the appellant was no longer Islam as specified in Islam. Hence, such act could not be said to be contrary to art 11(1) which itself provides the

requirement to comply with the conditions of the religion before she had renounce Islam (see para 17.2). (Emphasis added.)

[29] In *Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2012] 3 MLJ 694; [2010] 3 MLRA 355; [2011] 2 CLJ 165 the appellant in this case is a valid wife of the deceased sought a declaration that the deceased was a Hindu, following the custom and Hindu religion before his death. The appellant also contended that as the deceased was not a Muslim on the date of his death, all the documents of conversion of the deceased to the Islamic religion were void. The issue before this court was whether the learned High Court judge had erred in dismissing the appellants application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the order of the Syariah High Court.

[30] The appellant contended, inter alia, as follows: (a) that by making the orders as he did, the learned judge had abrogated the powers of the civil court to the Syariah Court; (b) that it was not established that the Syariah High Court had jurisdiction in this case because it was not known whether the deceased in this case was a Muslim or not in the first place; and (c) that the first respondent was not a legal person and its appearance before the Syariah High Court was a nullity.

[31] Abdul Wahab Patail JCA (as he then was) held that:

> [9] In our view when giving effect to art 121(1A) the High Court should first decide whether it has jurisdiction ie whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court whether by state or federal law.
>
> [10] Once the civil High Court determines and decides that the matter is within the jurisdiction of the Syariah Court, the civil High Court should then decline to adjudicate further on the matter.
>
> [11] This was clearly the approach taken by the learned High Court judge in this case. After setting out the case for the appellant extensively and citing several authorities the learned judge concluded:
>
> ...
>
> 18. Di Wilayah Persekutuan terdapat peruntukan yang nyata dalam Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) mengenai isu pemelukan agama Islam. Bahagian IX Akta 505 menghuraikan dengan jelas prosedur pemelukan Islam. Oleh itu, sudah tentu mahkamah yang mempunyai bidang kuasa dan kompeten untuk menentukan apa-apa perkara yang timbul di dalam Akta 505, seperti kesahan pemelukan seseorang itu ke agama Islam adalah Mahkamah Syariah dan bukan Mahkamah Sivil. Ini adalah selari dengan perkara 121(1A) Perlembagaan Persekutuan yang memperuntukkan bahawa Mahkamah Sivil tidak mempunyai bidang kuasa

A berkenaan dengan apa-apa perkara di mana Mahkamah Syariah mempunyai bidang kuasa yang diberikan di bawah undang-undang bertulis.

19. Saya juga berpendapat bahawa *walaupun pemohon melalui affidavit-afidavit yang difailkan cuba menunjukkan bahawa si mati dalam tempoh yang dikatakan si mati telah memeluk agama Islam, telah mengambil bahagian dalam upacara keagamaan Hindu, dan melakukan perkara yang bertentangan dengan agama Islam atau tidak melakukan perkara seperti yang sepatutnya dilakukan oleh orang Islam, tetapi perkara-perkara tersebut adalah persoalan mengenai undang-undang Islam. Sekali lagi bidang kuasa untuk menentukan perkara-perkara seperti itu adalah Mahkamah Syariah dan bukan Mahkamah Sivil*.

C It certainly cannot be said, as the appellant has tried to say, that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court. (Emphasis added.)

D **[32]** In *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757; [2014] 3 MLRA 173; [2014] 4 CLJ 253, the respondent's ('the plaintiff') father had converted to Islam together with his wife and five children, including the plaintiff, who was then one year and three E months old in 1983. The statutory declaration was affirmed by her parents and the conversion was registered with Majlis Agama Islam dan Adat Resam Melayu Pahang. A certificate of conversion was subsequently issued to the plaintiff's parents but the plaintiff and her siblings' certificates were never issued until 1989.

F **[33]** In 2009, the plaintiff commenced an action against the defendants in the High Court, inter alia, for the declarations and orders that the defendants had wrongfully and unlawfully subjected the plaintiff to undergo a religious G conversion process at the age of seven years old; the *Sijil Akuan Masuk Islam* dated 28 December 1989 executed by the plaintiff was ineffective, null and void ab initio; and that the Director General of the National Registration Department is ordered and directed to immediately take all the necessary actions to rectify its record about the plaintiff, by reinstating the plaintiff's H original Indian name in the plaintiff's identity card and to delete the word 'Islam'.

[34] Her application was struck out at the High Court but was allowed at the Court of Appeal. The Court of Appeal, in allowing plaintiff's appeal, ordered I the plaintiff's originating summons be converted to a writ and directed the matter be reverted to the High Court to be tried.

[35] The issues that arose for the court's determination in this appeal were whether the civil or Syariah Court had the jurisdiction to determine whether a

person professed Islam or not; and what were the matters that fall within the jurisdiction of the Syariah Court. Arifin Zakaria CJ (as he then was) held that:

> Article 121 of the Federal Constitution ('the Constitution') clearly provided that the civil court shall have no jurisdiction on any matter falling within the jurisdiction of the Syariah Court. The matters that fall within the jurisdiction of the Syariah Court were as provided under art 74 of the Constitution, inter alia, matters falling within the State List in the Ninth Schedule which were Islamic law, personal and family law of person professing the religion of Islam. *Whether a person was a Muslim or not was a matter falling under the exclusive jurisdiction of the Syariah Court. It would be highly inappropriate for the civil court, which lacks jurisdiction pursuant to art 121, to determine the validity of the conversion of any person to the religion of Islam as this is strictly a religious issue. Therefore, the question of the plaintiff's conversion in 1983 fell within the exclusive jurisdiction of the Syariah Court* (see paras 16–18, 27 & 30). (Emphasis added.)

[36] In *Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* [2018] 2 MLJ 354; [2017] 6 MLRA 345; [2017] 2 SSLR 387 the appellant had left the religion of Islam and embraced Christianity. She afterward went to the National Registration Department ('NRD') to apply for a change of her name in her NRIC but NRD informed her that she had to first obtain the letter of release from Islam from the first respondent. The appellant later went to the first respondent's office and met one Ustazah Hanisah who informed her that she had to go to the Syariah Court and attend counseling sessions as an adherence procedure to renounce Islam but the said sessions never materialised.

[37] The appellant afterward applied for leave to move judicial review against the respondents for the following reliefs: (a) a declaration that she was a Christian; (b) an order of mandamus to compel the first and/or second respondents to issue the said letter; and (c) an order of mandamus to compel the third respondent to change the appellant's name from Syarifah Nooraffyzza bt Wan Hosen to Vanessa Elizabeth. The learned trial judge dismissed the appellant's application. The issue before this appeal was whether the Sarawak Syariah High Court has jurisdiction to deal with the question of apostasy.

[38] The Court of Appeal speaking through Zawawi Salleh JCA (as he then was) held that:

> *Syariah Courts and civil courts formed two separate legal system. The interpretation that reflected the state of the law today was that the Syariah Court and not the civil court had the exclusive jurisdiction to deal with the issue of conversion out of Islam. In addition, our apex court had consistently and repeatedly held that jurisdiction of the Syariah Court regarding apostasy need not be expressly laid out in the state laws*. The court was satisfied that the learned trial judge did not erred in law in holding that the High Court had no jurisdiction to hear apostasy matters (see paras 25, 31, 36–37 & 39).

A ...

In our view, *the interpretation that reflects the state of the law today is that the Syariah Court and not the civil court has the jurisdiction to deal with the issue of conversion out of Islam*. The constitutional and jurisdictional issues as to whether the Syariah Court has jurisdiction to deal with the questions of apostasy was clarified by Mohamad
B Dzaiddin FCJ (as he then was) in the case of *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 wherein His Lordship said:

...

C *It does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts*.

The court at para 39 concluded that:

D *For the foregoing reasons, we agree with the conclusion of the learned judge that the appellant's application for leave to move for judicial review against the respondents ought to be dismissed as the matter is within the exclusive jurisdiction of Syariah Court and not the Civil High Court*. (Emphasis added.)

E **[39]** The Federal Court in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 2 MLRA 70; [2021] 3 CLJ 301 have also held that in a matter concerning renunciation of Islam, the jurisdiction lies in the Syariah Court. In this case, the High Court found that the appellant's mother and her putative father were married, and that the appellant was a child
F of the marriage. The High Court also found that the validity of their marriage fell within the jurisdiction of the Syariah Court and consequently, the question of whether the appellant was no longer a Muslim also fell within the Syariah Court's jurisdiction.

G **[40]** The Court of Appeal dismissed the appellants appeal and held that the appellant is a Muslim and the effect of the declaration sought by the appellant was to enable her to renounce Islam as her religion that in effect amounted to a declaration that the appellant is no longer a Muslim. The Court of Appeal went on to hold that the jurisdiction is thus vested with the Syariah Court and
H not the civil court. The Court of Appeal held that according to cl (1A) of art 121 of the FC, the appellant's avenue for the declaration sought was within the jurisdiction of the Syariah Court and not the civil court.

[41] The issue in this case is where the subject matter of a cause or matter
I requires a determination of 'whether a person is or is not a Muslim under the law' rather than 'whether a person is no longer a Muslim', whether the High Court has the exclusive jurisdiction to hear and determine the said subject matter on a proper interpretation of art 121 and item 1 of the State List of the Federal Constitution.

[42] Tengku Maimun CJ held that:

> The civil courts had the jurisdiction to determine the status of persons who claimed they 'were never Muslims' as opposed to 'no longer Muslims'. In the former, the question was whether a person was, in the first place, one who professed the religion of Islam; it was a question regarding one's identity under the Federal Constitution which, in turn, necessitated constitutional interpretation and therefore the civil courts were empowered, indeed duty-bound, to adjudicate the matter even if there were religious connotations attached to it. *But when it concerned a case seeking renunciation from the religion of Islam, the matter was exclusively within the jurisdiction of the Syariah Courts by virtue of art 121(1A) of the Federal Constitution* (see paras 99, 106 & 108). (Emphasis added.)

[43] It is trite that by virtue of art 121(1A) of the FC, civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[44] Back to the crux issue of this present case, the applicant, being a Muslim, is seeking to renounce her faith from the religion of Islam to Christianity. Therefore, it is my view that it is the Syariah Court that can give her the order for her application to renounce Islam. She will have to go to the Syariah Court to get the order as provided by the law. This is also supported by the decision of nothing less than the Federal Court and other cases cited above that Syariah Courts will have jurisdiction over cases involving renunciation of Islam.

[45] The civil court in this case has no jurisdiction to determine and to decide on the applicant's application to renounce Islam as it falls within the jurisdiction of the Syariah Courts.

[46] The Syariah Courts have the power to hear the applicant's case under s 46(2)(b)(x) of Act 505 which provides:

> (2) A Syariah High Court shall —
>
> ...
>
> (b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to —
>
> ...
>
> (x) other matters in respect of which jurisdiction is conferred by any written law.

[47] Interestingly, the applicant essentially contends that there is no prior determination by the Syariah Court on the subject matter of the application and as such, the application does not involve reviewing or re-litigating any decision of the Syariah Court and the application is not barred by art 121(1A)

of the FC.

[48] However, this court is of the view that regardless of whether there is a prior determination or decision by the Syariah Court or otherwise, once the subject matter falls within the jurisdiction of the Syariah Court, art 121(1A) of the FC operates to render the subject matter and the Syariah Courts decision not amenable to judicial review.

[49] In the present case, the applicant seeks to renounce Islam but does not file a case at the Syariah Court. It is my view that since renunciation of Islam falls within the jurisdiction of the Syariah Court, by virtue of art 121(1A) of the FC, this honourable court has no jurisdiction over the applicant's application to renounce Islam and the said application should be heard and determined by the Syariah Court.

'PROFESSING THE RELIGION OF ISLAM'

[50] The applicant essentially contends that the Syariah Court has no jurisdiction over the applicant because the applicant is no longer a person who professes Islam at present and as such, is not a 'persons professing the religion of Islam' as provided in item 1 of the State List of the FC.

[51] It is to be noted that as a person who has converted to Islam, the applicant falls under the definition of Muslim under s 2(1)(d) of Act 505 which provides as follows:

> 2(1) In this Act, unless the context otherwise requires-
>
> *'Muslim' means —*
>
> ...
>
> (d) *a person who has converted to Islam in accordance with the requirements of section 85* (Emphasis added.)

[52] Further, as a person who has converted to Islam and has been registered in the Register of Muallafs, the applicant shall be treated as a Muslim for the purposes of any Federal or State law and for all time. This is expressly provided by s 91(1) of Act 505 as follows:

> 91(1) *A person who has converted to Islam and has been registered in the Register of Muallafs shall, for the purposes of any Federal or State law, and for ail time, be treated as a Muslim*. (Emphasis added.)

[53] In *Rosliza Ibrahim*, it was held by the Federal Court that:

> [83] Article 11(1) of the FC guarantees the right to profess and practice one's religion. The conjunction 'and' in art 11(1) suggests that it governs more than mere

professing. It extends to how one identifies oneself or how one may be identified with a specific religion and the right to also determine one's own level of devotion to his or her belief. *However, item 1 of the State List singularly uses the word 'professing'. Contrasting art 11(1) with item 1 of the State List, it is plain that the latter was deliberately more narrowly worded to exclude the requirement of 'practice'. Thus, so long as one is a Muslim by identification whether he practises or not, or whether he continues to believe in the faith or not, he is no less legally identified as a 'person professing the religion of Islam'*. (Emphasis added.)

[54] Added to that, the applicant cannot unilaterally on her own accord renounce the religion of Islam whether intrinsically or extrinsically. The Federal Court in *Rosliza Ibrahim* held as follows:

[87] *Administratively, once one becomes a Muslim, and becomes subject to the jurisdiction of the Syariah Courts, the procedure to 'leave' the religion also becomes subject to Islamic law* ...

[88] *Summarising the above, one cannot unilaterally on his own accord renounce the religion of Islam. Doing so would amount to an offence against the precepts of Islam. In such an instance, the Syariah Court would have both jurisdictions ratione personae and ratione materiae* ... (Emphasis added.)

[55] Therefore, it is clear that the Syariah Court has jurisdiction over the applicant and the applicant's contention is clearly devoid of merit.

MANDAMUS

[56] The applicant framed the application as a challenge against the alleged omission on the part of the first respondent to decide the applicant's application to renounce Islam. In essence:

(a) the applicant contends that the first respondent has the implied jurisdiction to hear an application to renounce Islam;

(b) the applicant contends that the first respondent's refusal and/or delay in deciding the applicant's application to renounce Islam amounts to an omission; and

(c) the applicant seeks to obtain mandamus as a relief for the alleged omission on the part of the first respondent.

[57] It is to be noted that the courts jurisdiction to grant an order of mandamus is based on s 25(2) of the Courts of Judicature Act 1964 ('the CJA'), para 1 of the Schedule to the CJA and s 44(1) of the Specific Relief Act 1950 ('the SRA').

[58] The Federal Court in *Minister of Finance Government of Sabah v Petrojasa Sdn Bhd* [2008] 4 MLJ 641; [2008] 5 CLJ 321; [2008] 1 MLRA

705, held that an order of mandamus can be granted either:

(a) under s 44 of the SRA; or

(b) the additional powers of the High Court provided by para 1 of the Schedule to the CJA.

[59] Furthermore, O 53 r 1(2) of the ROC provides that this Order (O 53) is subject to the provisions of Chapter VIII of Part 2 of the SRA.

[60] Therefore, any application for an order of mandamus made by way of judicial review proceedings must comply with the requirement of s 44 of the SRA.

[61] Section 44 of the SRA reads as follows:

ENFORCEMENT OF PUBLIC DUTIES

44 Power to order public servants and others to do certain specific acts

(1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:

Provided that —

(a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;

(b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;

(c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;

(d) the applicant has no other specific and adequate legal remedy; and

(e) the remedy given by the order applied for will be complete.

(2) Nothing in this section shall be deemed to authorize a Judge —

(a) to make any order binding on the Yang di-Pertuan Agong;

(b) to make any order on any servant of any Government in Malaysia, as such, merely to enforce the satisfaction of a daim upon that Government; or

(c) to make any order which is otherwise expressly excluded by any law for the time being in force.

[62] In *Koon Hoi Chow v Pretam Singh* [1972] 1 MLJ 180b; [1972] 1 MLRH 497, Sharma J (as he then was) had outlined four prerequisites essential to the issue of an order under s 44 of the SRA or of a mandamus:

(a) whether the applicant has a clear and specific legal right to the relief sought;

(b) whether there is a duty imposed by law on the first respondent;

(c) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the first respondent; and

(d) whether the applicant has any remedy, other than by way of mandamus, for the enforcement of the right which has been denied to him.

[63] Based on the case, in order to issue to the order of mandamus, the applicant must show not only that she has a legal right to have the act performed but that the right must be so clear, specific and well defined as to be free from any reasonable controversy. The order cannot be issued when the right is doubtful, or is a qualified one or where it depends upon an issue of fact to be determined by the first respondent. The failure to show the existence of any legal right to compel the performance of a legal duty cast upon the first respondent will deny the order of mandamus.

[64] In view of the above, it is clear that one of the conditions for an order of mandamus to be issued is the existence of a duty imposed by law on the first respondent. The court can command the first respondent to do that of which it was his clear legal duty to do so.

[65] In absence of such legal duty, mandamus shall not lie against the first respondent. I find support for my view by referring to the Court of Appeal case of *Peguam Negara Malaysia v Dr Micheal Jeyakumar Devaraj* [2012] 1 MLJ 179; [2012] 1 MLRA157; [2011] 9 CLJ 645 where it was held as follows:

> [30] In the instant appeal, the disbursement of the allocation is entrusted to the DG and/or the director, who would consider each application in accordance with the guidelines for that purpose. *This involves an exercise of discretion based on a detailed and comprehensive process of evaluation. The DG and/or the director is not required to approve all and sundry applications for the allocation. The respondent must show, inter alia, that there is a legal or statutory duty on the part of the DG and/or the director as a matter of course to approve his 2010 application. The respondent must establish the existence of a duty of a public nature, the performance of which is imperative and not optional or discretionary. The respondent has failed to do so. The notice of motion is clearly premised on the DG's and/or the director's discretion to approve and disburse funds'. There is not an iota of law that the DG and/or the director must do so*. (Emphasis added.)

[66] Further, in the case of *Karpal Singh Ram Singh v Ketua Hakim Negara* [2011] 1 MLRH 23; [2011] 4 CLJ 179, the applicant applied, inter alia, for an order of mandamus to issue against the respondent, directing the respondent to respond to the applicant's request vide the applicant's letter dated 1 December

2010, that the respondent recuse himself from determining the merits of a complaint by the applicant against the respondent under s 13 of the Judges' Code of Ethics 2009. The Attorney General, in objecting to the leave of the judicial review application, relied to, among others, the ground that the respondent does not have a legal duty under s 13 of the Judges' Code of Ethics 2009 to respond in a manner as dictated by the applicant in its letter. Aziah Ali J (as she then was) held as follows:

> [12] *The Attorney General submits that under s 44(1)(b) of the SRA, the applicant must show that the respondent has a legal duty under ss 12 and 13 of the Code*. The Attorney General cites the case of *Koon Hoi Chow v Pretam Singh* wherein Sharma J said:
>
> > *Proviso (b) requires that the doing or forbearing must be clearly incumbent on the person in his public character. There must be under the law some duty cast upon the public officer. If he does not do the duty, then the court will call upon him to perform that duty*.
>
> It is submitted that s 12 of the Code confers power on the Chief Justice to receive any complaint against a judge alleged to have committed a breach of the provision of the Code. Section 13 empowers the Chief Justice to determine the complaint, coupled with the discretion of whether to dismiss the complaint, to refer the judge to a tribunal or to refer the matter to the Committee under s 14 of the Code. It is submitted that the words '... *Chief Justice is of the opinion that the complaint has no merit, he may dismiss it...' Clearly indicates that it is an empowering provision coupled with the discretionary powers to act in any manner prescribed in s 13* (*Gasing Meridian Sdn Bhd v Datuk Bandar Kuala Lumpur* [2004] 1 CLJ 219). *Therefore, it is submitted that section 13 does not impose a duty on the Chief Justice to act in a manner dictated by the applicant*.
>
> [16] *Mandamus can be granted only when a legal duty is imposed on an authority*. In MP Jain 'Administrative Law of Malaysia and Singapore' (3rd Ed) at pp 652–653 it is stated:
>
> > The order of mandamus is a command issued by the High Court asking an authority to perform a public duty imposed upon it by law .... *Mandamus can be granted only when* (i) *a legal duty is imposed on an authority, and it does not perform the same*; and (ii) the applicant has a legal right to compel the performance of the public duty prescribed by law.
> >
> > *What can be enforced through mandamus is a duty of a public nature, the performance of which is imperative and not optional or discretionary with the concerned authority. Thus, if an officer has power, rather than a duty, and if he does not use his power, mandamus is not issued to compel him to exercise his power*.
>
> As correctly submitted by counsel holding watching brief for the Bar Council, the Code does not provide for a method or manner in dealing with a situation where a complaint is made against the Chief Justice. Likewise, as submitted by the Attorney General, ss 12 and 13 of the Code do not impose a legal duty on the respondent to act in the manner dictated by the applicant. Therefore, in the absence of any legal duty that is imperative and not optional or discretionary in nature imposed upon the respondent under ss 12 and 13 of the Code, I find that the applicant has failed

to satisfy the condition under s 44(1)(b) of the SRA. Thus, this is further ground to dismiss the application for being frivolous. (Emphasis added.)

[67] In the instant case, it is my view that the first respondent has no jurisdiction to determine the applicant's application to renounce Islam and therefore, there is no legal duty on the part of the first respondent to decide the applicant's application to renounce Islam. As such, there is no omission which can attract the grant of mandamus.

[68] Further, I find that there is no single legal provision nor legal precedent specifically provide or hold that the first respondent has the jurisdiction to hear an application to renounce Islam.

[69] All in all, it is my view that the applicant's action in framing the application as a challenge against the alleged omission by the first respondent is a futile attempt to evade the application of art 121(1A) of the FC.

CONCLUSION

[70] Bearing in mind that this is an application for leave to commence judicial review proceedings under O 53 of the ROC, it is trite that the test for leave to commence with judicial review be complied with.

[71] Having considered the application, I am of the opinion that the subject matter of this application is not amenable to judicial review.

[72] In addition to that, I also reiterate that the applicant has failed to show an arguable case to obtain the order of certiorari and mandamus at the substantive stage. The orders sought by the applicant are frivolous in nature.

[73] It is my considered view that the applicant has failed to cross the hurdle of the judicial review test. As discussed above, the subject matter in this case has been settled by law. It is clear that there is no arguable case for the applicant. Therefore, this application for leave is frivolous and is not amenable to judicial review.

[74] Thus, this application for leave to commence the judicial review proceeding (encl 1) is dismissed with costs of RM3,000 without the allocator fee.

Leave application dismissed with costs.

Reported by Ashok Kumar